

(iv) Paragraph 16 on pages 8 and 9.

It is further agreed and stipulated by and between the parties hereto that a map designating the forestry areas which shall be subject to cutting by the Seller and also designating those areas belonging solely to the Buyer, wherein the Seller agrees that there will be no cutting, shall be attached hereto and made a part hereof as though fully set forth herein and marked Exhibit A as previously mentioned.

It appears that the map described in the Agreement of Sale cannot be found, although various witnesses testify that it once existed. As a professional forest manager, I can confirm that it would be ordinary industry practice to protect certain valuable resources on the property. Typically, any stream that has a breeding trout population is given a 100-foot buffer. Such a strip was probable on the Clough Farm along Spring Creek, Brokenstraw Creek, Tom's Run and its tributaries and the Greeley. There would also typically be a 100-foot buffer around any buildings, and an exclusion of swamp, wetlands, and areas used for pasture and/or agriculture.

### Conclusions

#### A. Matson's Cutting Practices.

Matson Lumber Company's cutting practices show absolutely no concern for the forest as a renewable resource that should be managed to promote the continuing production of quality timber. Matson has left the average basal area of acceptable growing stock below 30 square feet, which is far below any accepted management guidelines. Damage from skidding and felling is severe on 34.4% of the remaining trees. Almost all remaining trees are degraded, and have reduced commercial value or no commercial value at all, because of sprouting from over harvesting. Skidding across and in streams is frequently evident. Excessive and unnecessary roads were built. Matson made poor use of the trees they felled, and abandoned valuable cut material to decay.

The following examples demonstrate some of the ways in which Matson was reckless in its timber practices and caused unnecessary damage on the Clough Farm:

1. Trees removed right up to banks of Spring Creek. Cutting along streams has been no different than anywhere else.

2. No Respect for residual trees. Felling damage, skidding damage, dozer damage, chainsaw damage is evident everywhere.

3. Wasteful logging practice. Many logs and even entire trees were cut and left in woods. (This volume is not reflected in the damages calculations below, even though Mr. Carlisle has lost such abandoned trees.)

4. No respect for streams and springs. Many tops were left in water courses. Skidder crossed and in some instances skidded logs in stream bed.

5. There is no evidence of any sound forest management plans being used by Matson. Stands with a high B.A. and excellent growing stock have been reduced to poor quality stands with less than 30 B.A. of acceptable growing stock. This is so far below any graph that it is off the page.

In short (and undermining its claim that it has perpetual harvest rights on the Clough Farm), it is apparent that Matson has tried to get as much good timber from the farm as fast as possible, without regard to any damage it was causing to the timber stands or their future reproductive capacity.

#### B. Damages to Carlisle.

Between November 1988 and April 1995, based on log receipts supplied by Matson, Matson and/or its agents removed 4,203,678 board feet Doyle rule from the Clough Farm. Converted to International 4-inch rule, this figure equals 7,125,234 board feet. This figure does not include the logs left in the woods due to wasteful utilization practices.

The value of this timber, accounting for volume and species, based on the average value of stumpage in northwestern Pennsylvania published in the Penn State University "Timber Market Report" for the fourth quarter of 1996, is \$1,891,265.00. However, the trees removed by Matson were not average trees (the basis of the Penn State report), but very high quality trees. The value of the Clough Farm timber removed by Matson, using timber prices

for high quality timber stumpage based on the Timber Market Report and actual timber sold in the area, is \$3,655,060.40.

Because this timber was wantonly removed with no consideration for Mr. Carlisle's rights, Mr. Carlisle's damages for unlawfully removed timber (3 times stumpage value) are \$10,965,181.20.

Additionally, Mr. Carlisle has endured damage to residual trees still standing of 34.4%, resulting in a loss of \$584,268 times 3 = \$1,752,804.

Furthermore, if this property has been properly managed with the original stand as a base, a perpetual harvest income would be realized by Mr. Carlisle. A modest 6.4% annual growth would yield \$110,442.72 per year for at least thirty years, yielding a total loss of \$3,313,281.60 based on today's values. This figure does not even account for the normal increase in stumpage values, ingrowth of small trees into sawtimber, quality increases (grade 1 into veneer), improved species composition, value of trees less than 11.5 DBH, or corrective work.

The total loss suffered by Mr. Carlisle as a result of Matson's violations of the Agreement of Sale and its improper harvesting methods is \$16,031,266.80:

\$10,965,181.20	Timber unlawfully removed
1,752,804.00	Damage to timber left standing
<u>3,313,281.60</u>	Lost future value
<b>\$16,031,266.80</b>	<b>Total</b>

#### C. Matson's Damage Claims.

##### 1. Tree Stands

I have located a total of ten tree stands on the Clough Farm (one more than Matson alleges). Most of these stands were placed in trees with no commercial value, or were placed without the use of nails, so as not to damage the trees, or were erected before 1969. I have taken photographs of the trees at issue and have measured the trees. Of these, the only tree with any value damaged since 1969 is one 12" DBH Black Cherry (Volume 94 Bd. Ft. Int. ¼"), with a value of \$84.60 assuming a grade 1 log.

2. Signs on trees

Roadside trees and field edge trees do not produce quality lumber, because of excessive limbs and damage to boles and root systems from road maintenance equipment. Thus, Matson's claim that 96 trees "can no longer be used for veneer resulting in a loss of \$16,500.00" because of perimeter signs is nonsense. These trees never had any veneer potential, and never would.

Some of the perimeter trees exhibit nails. However, the nails are grown over, demonstrating that they have been there more than two years (probably at least fifteen or twenty years), and were therefore already there when Matson acquired the timber rights. All signs posted recently were put up with staples that do not penetrate through the bark, and therefore do not cause any damage.


In short, I did not find any damage to any trees from any posting of signs that would have resulted in any veneer log being down-graded. Matson's total loss from all sign posting is exactly \$0.00.

3. Roads

Matson has not demonstrated any actual repair costs in support of this claim. Usually road damage, such as rutting, from off-road vehicles is inexpensive to repair.

Thank you for the opportunity to undertake this interesting study. Please call me if I can provide any additional information.

Respectfully,

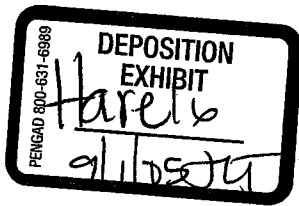
A handwritten signature in cursive script that reads "James Hall". The signature is written in dark ink and is positioned above the printed name and title.

James Hall  
Consulting Forester

*Attorneys at Law*

Law & Finance Building  
Suite 1801  
429 Fourth Avenue  
Pittsburgh, Pa. 15219

Telephone 412/338-8632  
Facsimile 412/338-6611



May 7, 1997

Mr. Albert T. Carlisle  
1210 Oak Drive  
Ashtabula, OH 44004

Re: Carlisle v. Matson Lumber

Dear Bert:

I am delighted to enclose a copy of our **Supplemental Pretrial Narrative Statement**, the original of which was filed today.

Please call if you have any questions.

Very truly yours,

Scott Michael Hare

SMH:crc

Enclosure

cc (w/encl.): Mr. James Hall  
Mr. Lainard Bush

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ALBERT T. CARLISLE,	)	
	)	
Plaintiff,	)	
	)	No. 95-0376
v.	)	
	)	Judge Lancaster
MATSON LUMBER CO. and	)	
MATSON HARDWOODS, INC.,	)	
	)	
Defendants.	)	

**SUPPLEMENTAL PRETRIAL NARRATIVE STATEMENT OF  
PLAINTIFF/COUNTERCLAIM DEFENDANT ALBERT T. CARLISLE**

NOW COMES Plaintiff/Counterclaim Defendant  
Albert T. Carlisle, by his undersigned counsel, and hereby  
respectfully submits the following Supplemental Pretrial  
Narrative Statement. This Statement supplements the  
disclosures set forth in Plaintiff's original Pretrial  
Narrative Statement previously filed in this action.

**I. Factual and Legal Contentions**

Plaintiff's original Pretrial Narrative Statement  
identifies several breaches by Matson of Carlisle's options  
and rights of first refusal under the Agreement of Sale.  
Matson additionally breached paragraph 15.A of the Agreement  
of Sale by cutting timber without giving notice as required  
in that paragraph. Paragraph 15.A gives Carlisle an option

to purchase the timber "in the event [Matson] shall desire to sell, transfer or assign the timber." Paragraph 15.A therefore requires Matson to notify Carlisle in writing each time it desires to cut timber to effectuate a sale, transfer or assignment of such timber, thereby allowing Carlisle to exercise his thirty-day option to purchase the timber. Matson repeatedly cut timber, however, without giving any such written notice, and thereby failed to honor Carlisle's purchase option provided by the Agreement of Sale. Each such failure constitutes a breach of the Agreement and a wrongful removal of Carlisle's timber.

## II. Damages

As set forth in the report of James Hall attached hereto, Carlisle has suffered the following damages: (a) loss of the value of all trees wrongfully harvested and removed by Matson in the amount of \$3,655,060.40, trebled equals **\$10,965,181.20**; (b) loss of the value of timber damaged by Matson as a result of careless harvesting practices in the amount of \$584,268.00, trebled equals **\$1,752,804.00**; and (c) destruction of future sustained-yield income potential in the amount of **\$3,313,281.60**. Carlisle's total damages are therefore **\$16,031,266.80**.



**James Hall**  
CONSULTING FORESTER

R.D. #1 Box 1102 • Russell, Pennsylvania 16345 • (814) 757-4488

May 2, 1997

Scott Michael Hare, Esquire  
Bartony Hare & Edson  
Law & Finance Building Suite 1801  
429 Fourth Avenue  
Pittsburgh, PA 15219

Re: Clough Farm/Matson Lumber Co.

Dear Mr. Hare:

I have been engaged by Albert T. Carlisle to assess the condition and history of the timber stands and associated land on the Clough Farm, determine the value of the standing timber at various times in its history, assess the forestry practices employed by Matson Lumber Company and Matson Hardwoods (collectively "Matson") on the farm, and determine and define the damages to Mr. Carlisle caused by Matson. Further, I have been requested to assess the meaning of certain provisions contained in the Agreement of Sale between Mr. Carlisle and the original seller. Finally, I have been requested to evaluate the damage claims asserted by Matson in its counterclaims against Mr. Carlisle.

This letter describes my methodology, and reports my findings and conclusions as of this date. I offer all of the opinions expressed herein within a reasonable degree of scientific certainty.

#### Description of the Property

The property in question, known as Clough Farm, is located in Spring Creek Township, Warren County, Pennsylvania. The property encompasses about 1239.6 acres. Of the total acreage, approximately 779 acres are commercial forest land.

This property once had very high quality stands of red oak, black cherry, white ash, sugar maple, red maple, eastern hemlock, basswood, white pine, and various other species. Based on the evidence of residual stumps and some uncut areas, I have concluded that this property was once a



majestic example of the excellent timber that this area of Pennsylvania can produce. Through good forest management, under the guidance of a professional forester, this area could have been and should still be a highly productive, healthy and profitable forest. As I will detail below, because of Matson's forestry practices, it is not.

### Methodology

In order to provide a complete and accurate assessment of the 779 acres of commercial forest land on the farm, I used the following techniques.

- A. General overview and boundary line check.
- B. Typed the timber: Divided the area into homogenous stands using ground surveys and aerial photography.
- C. Took over 120 random plots using two techniques.
  - 1. Plotless cruising with a 10 factor prism.
  - 2. 1/20 acre plots.
- D. Collected data regarding:
  - 1. Species
  - 2. Quality
  - 3. D.B.H. (Diameter Breast High)
  - 4. Merchantable Height
  - 5. Number of trees
  - 6. Damage to residual trees
  - 7. Density
- E. Referred as needed to the following materials:
  - 1. Sylvah (NSFS) Research Lab
  - 2. Penn State volume tables
  - 3. PA Bureau of Forestry volume factors
  - 4. USDA-Forest Service research paper NE-373
  - 5. USDA-FS Agricultural handbook 355
  - 6. USDA-FS General technical report NE-96
  - 7. USDA-FS Research paper NE-143
  - 8. Timber Management Guide-Ben Roach
  - 9. Forest Reference Manual-J.M. Francis
  - 10. USDA-FS Agriculture Information Bulletin 419
  - 11. USDA-FS Agriculture Information Bulletin 405
  - 12. USDA-FS Research Paper NE-127
  - 13. USDA-FS Agriculture Handbook 678

14. NY State Dept. of Environmental Conservation  
Stumpage Price Reports-1982 to 1997
15. Penn State University-Timber Market Reports  
1984-1997
16. USDA-FS Actual Bids on Timber Sales
17. Timber Sale Data collected by James Hall
18. Data supplied by Norman Sunderland,  
Consultant Forester
19. 1968, 1987, 1988 and 1989 Aerial Photography
20. Harvesting data supplied by Matson Lumber  
Company for November 1988 through April 1995
21. Agreement of sale-Fisher & Young, Seller and  
Albert T. Carlisle, Buyer dated September 30,  
1969
22. Plaintiff's pre-trial narrative dated  
March 22, 1996
23. Defendant's pre-trial narrative dated  
April 11, 1996
24. Meyer's *Forest Mensuration*

**Significant Provisions of Agreement of Sale**

During my career in the forestry industry, I have been involved in negotiating, drafting, monitoring and enforcing countless contracts governing timber rights. As a result, I am intimately familiar with the terminology and usage of the timber industry, and I am thereby able to interpret the Agreement of Sale between Mr. Carlisle and Fisher & Young to explain the meaning it has in the timber industry.

I have been asked to interpret the following provisions of the Agreement of Sale: (i) the final paragraph on page 5; (ii) paragraph 15.A. on page 8; (iii) paragraph 15.B. on page 8; and (iv) paragraph 16 on pages 8 and 9.

(i) Final Paragraph on page 5.

EXCEPTING and RESERVING from and out of this conveyance, all of the timber and trees, standing and fallen, situate on the premises above described, with full right of ingress, egress and regress for purposes of cutting, skidding, piling and removing the same, constructing roadways and skidways, and piling yards for such purposes, being subject to other terms relative thereto set forth below, SUBJECT, however, to the right of

Buyer to use for its own purposes all trees fallen for more than one year and all tree-tops remaining after logging operations.

This provision very clearly reserves only those trees already actually existing on the date of the Agreement. This provision does not reserve any rights in any trees germinating after September 30, 1969, which are the property of Mr. Carlisle and must be respected as such.

It is possible to reserve an ownership interest in future trees, as well as existing trees, and parties sometimes agree to do so. However, such an ownership interest is always specifically identified. Furthermore, it is easy to reserve a future interest using language like this: "all trees now on this property, and all trees that ever grow on this property at any time in the future, are the property of the timber company." Such simple language clearly and plainly reserves not only trees then in existence, but all trees forever. The Agreement of Sale between Mr. Carlisle and Fisher & Young does no such thing, and anyone experienced in the forestry industry would understand the paragraph quoted above to retain ownership only in the trees that are actually existing on the date of the Agreement.

(ii) Paragraph 15.A. on page 8.

15.A. That in the event the Seller shall desire to sell, transfer or assign the timber reserved on the premises above described, Seller shall give Buyer written notice thereof and hereby grants the Buyer the option for thirty days following the posting of said notice by Seller to Buyer of purchasing said timber at the price offered therefore by a bona fide prospective third party purchaser, transferor or assignor.

This provision refers to the timber itself, as opposed to the "timber rights" (see paragraph 15.B. below). Each and every time the Seller plans to sell, transfer or assign timber (in any quantity, including individual trees), it must give Mr. Carlisle a 30-day written notice, and the option to buy the specified trees at the price offered by the third party.

The business of a commercial timber company like Matson is to cut timber and sell the resulting logs to third-party purchasers. Such a company demonstrates a

"desire to sell, transfer or assign the timber reserved on the premises" by cutting the timber. Accordingly, Matson is required to notify Mr. Carlisle in writing each time it desires to cut timber to effectuate a sale, transfer or assignment of such timber, thereby allowing Mr. Carlisle to exercise his thirty-day option to purchase the timber. Had Matson honored this obligation, Mr. Carlisle would have been able to purchase any or all such timber (that is, individual trees) prior to its being cut. (Once cut, timber becomes logs: "timber" means standing merchantable trees. Upon being cut, therefore, the timber is transferred, in violation of the Agreement.)

Paragraph 15.A. would also apply, obviously, in the event Matson desired to sell, transfer or assign all of the timber. Once again, it would be required to give written notice to Mr. Carlisle and allow him thirty days to exercise his option to purchase such timber.

(iii) Paragraph 15.B. on page 8.

15.B. Should the present management and/or ownership of Seller change, Buyer shall be so advised by Seller in writing and shall have an thirty day option to purchase the timber rights at a price to be mutually agreed upon, or in failure thereof, by arbitration (each side to choose one of the arbitrators and the two arbitrators to select a third). The arbitrators shall establish the price which shall be binding without appeal of the parties.

Unlike 15.A., which refers to "timber" (trees), 15.B. refers to "timber rights." These are two entirely different terms with different meanings, and there is a reason for these two separate sections in paragraph 15.

In particular, under paragraph 15.B. the Seller is obligated to notify Mr. Carlisle in writing of any change in management and/or ownership of the Seller, whereupon Mr. Carlisle has 30 days to purchase the timber rights. This notice and option enable Mr. Carlisle to keep unwanted timber companies, subsequent to the original seller, off the property altogether by acquiring the remaining timber rights.

(iv) Paragraph 16 on pages 8 and 9.

It is further agreed and stipulated by and between the parties hereto that a map designating the forestry areas which shall be subject to cutting by the Seller and also designating those areas belonging solely to the Buyer, wherein the Seller agrees that there will be no cutting, shall be attached hereto and made a part hereof as though fully set forth herein and marked Exhibit A as previously mentioned.

It appears that the map described in the Agreement of Sale cannot be found, although various witnesses testify that it once existed. As a professional forest manager, I can confirm that it would be ordinary industry practice to protect certain valuable resources on the property. Typically, any stream that has a breeding trout population is given a 100-foot buffer. Such a strip was probable on the Clough Farm along Spring Creek, Brokenstraw Creek, Tom's Run and its tributaries and the Greeley. There would also typically be a 100-foot buffer around any buildings, and an exclusion of swamp, wetlands, and areas used for pasture and/or agriculture.

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#### C. Matson's Damage Claims.

##### 1. Tree Stands

I have located a total of ten tree stands on the Clough Farm (one more than Matson alleges). Most of these stands were placed in trees with no commercial value, or were placed without the use of nails, so as not to damage the trees, or were erected before 1969. I have taken photographs of the trees at issue and have measured the trees. Of these, the only tree with any value damaged since 1969 is one 12" DBH Black Cherry (Volume 94 Bd. Ft. Int.  $\frac{1}{4}$ "), with a value of \$84.60 assuming a grade 1 log.

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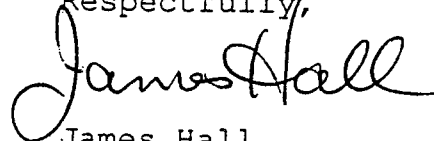
In short, I did not find any damage to any trees from any posting of signs that would have resulted in any veneer log being down-graded. Matson's total loss from all sign posting is exactly \$0.00.

3. Roads

Matson has not demonstrated any actual repair costs in support of this claim. Usually road damage, such as rutting, from off-road vehicles is inexpensive to repair.

Thank you for the opportunity to undertake this interesting study. Please call me if I can provide any additional information.

Respectfully,

A handwritten signature in cursive script that reads "James Hall".

James Hall  
Consulting Forester



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **Supplemental Pretrial Narrative Statement of Plaintiff/Counterclaim Defendant Albert T. Carlisle** was served upon all counsel of record in this matter on this 7th day of May, 1997 by hand delivery to the following:

Chester S. Fosse, Esquire  
Reale, Fosse, P.C.  
22nd Floor, Lawyers Building  
428 Forbes Avenue  
Pittsburgh, PA 15219

Counsel for Defendants  
Matson Lumber Company  
and Matson Hardwoods, Inc.

  
Counsel for Plaintiff

*Bartony Hare & Edson*

*Attorneys at Law*

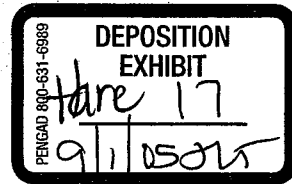
Law & Finance Building  
Suite 1801  
429 Fourth Avenue  
Pittsburgh, Pa. 15219

Telephone 412/338-8632  
Facsimile 412/338-6611

June 24, 1997

**VIA FACSIMILE TO 281-3849  
AND VIA UNITED STATES MAIL**

Chester S. Fossee, Esquire  
Reale, Fossee, P.C.  
22nd Floor, Lawyers Building  
428 Forbes Avenue  
Pittsburgh, PA 15219



Re: Carlisle v. Matson Lumber Co., et al.

Dear Mr. Fossee:

Thank you for participating in the mediation session yesterday. Please let this letter confirm the demand we set forth at that time. We will agree to settle this matter in its entirety on the following terms: (1) the Defendants and all affiliated entities must permanently vacate the Clough Farm, and must relinquish to Mr. Carlisle all rights they had, have or might have on or to that property; and (2) the Defendants must pay damages in the amount of \$5,000,000.00.

Please call if you have any questions.

Very truly yours,

A handwritten signature in dark ink that reads "Scott Michael Hare". The signature is written in a cursive, flowing style.

Scott Michael Hare

SMH:crc

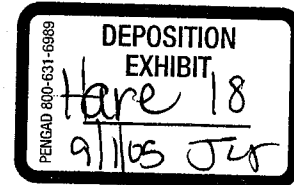
cc: Mr. Albert T. Carlisle

LAW OFFICES OF  
**REALE & FOSSEE, P.C.**  
22<sup>ND</sup> FLOOR, LAWYERS BUILDING  
428 FORBES AVENUE, PITTSBURGH, PA 15219

TELEPHONE  
(412) 281-8117

FACSIMILE  
(412) 281-3849

July 21, 1997



Scott M. Hare, Esquire  
Bartony, Hare & Edson  
Law & Finance Building, Suite 1801  
429 Fourth Avenue  
Pittsburgh, PA 15219

RE: Albert T. Carlisle vs. Matson Lumber Company and  
Matson Hardwoods, Inc.  
Civil Action No. 95-0376

Dear Mr. Hare:

In response to your request for information concerning the insurance limits, please be advised that Matson does have two excess policies. The first is with Firemen's Fund in the amount of \$10,000,000.00 and the second is with AIG also in the amount of \$10,000,000.00. Unless I hear from you to the contrary, I will assume that this correspondence is sufficient to respond to your request without the need of a formal document. If you would prefer it in a formal document, please advise and I will be more than happy to do so.

Very truly yours,

A handwritten signature in cursive script, reading "C. S. Fossee / JF".

C. S. FOSSEE

CSF/ksb

James Hall  
CONSULTING FORESTER

R.D. #1 Box 1102 • Russell, Pennsylvania 16345 • (814) 757-4488

Oct. 23, 1997

Scott Hare  
Bartony Hare & Edson  
Law & Finance Building  
Pittsburgh, PA

Re: Carlisle v. Matson Lumber Company

Dear Scott:

Report of remaining value of timber over 16" diameter measured 1 foot above the ground. All volumes are expressed using International  $\frac{1}{4}$ " rule - Penn State tables. Methodology used was the same as so stated in my may 2, 1997 report.

Volumes on acreage where no cutting has taken place.

151 acres	2,304,456 board feet	\$359,795.77
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Volumes on acreage where cutting is completed.

570 acres	596,552 board feet	\$ 50,949.95
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Total value of trees over 16" stump diameter

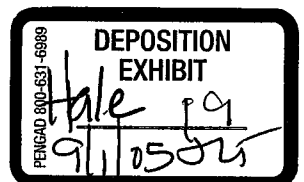
721 acres	2,901,008 board feet	\$410,745.72
-----------	----------------------	--------------

Respectively submitted,

James Hall

cc. Bert Carlisle  
Lainard Bush

Plaintiff's Appendix  
000669



		88/89	
SPECIES	Volume	\$/M	Value
Red Oak	85455	497	42471.14
Cherry	268956	550	147925.8
Ash	254179	325	82608.18
Hard Maple	424807	165	70093.16
Soft Maple	283204	110	31152.44
Poplar	38846	110	4273.06
Beech	341276	60	20476.02
Misc. Oak	7439	230	1710.97
Misc.	68215	68	4638.62
White Pine	24305	80	1944.4
Hemlock	0	80	0
Total			\$407293.79

			89/90
SPECIES	Volume	\$/M	Value
Red Oak	57757	421	24315.7
Cherry	103144	478	49302.83
Ash	138724	287	39813.79
Hard Maple	181726	108	19626.41
Soft Maple	121150	76	9207.4
Poplar	76606	96	7354.18
Beech	119069	67	7977.62
Misc. Oak	3453	248	856.34
Misc.	36942	67	2475.11
White Pine	1551	80	124.08
Hemlock	8616	80	689.28
Total			\$161742.74

		90/91	
SPECIES	Volume	\$/M	Value
Red Oak	108782	360	39161.52
Cherry	157237	564	88681.67
Ash	256423	233	59746.56
Hard Maple	179650	120	21558
Soft Maple	119767	86	8263.92
Poplar	289918	69	20004.34
Beech	109500	78	8541
Misc. Oak	10041	258	25905.78
Misc.	46738	78	3645.56
White Pine	4698	54	253.69
Hemlock	14319	54	773.23
Total			\$276535.27

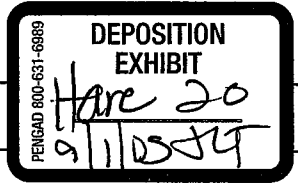
		91/92	
SPECIES	Volume	\$/M	Value
Red Oak	158940	484	76936.96
Cherry	184309	784	144498.25
Ash	270961	270	73159.47
Hard Maple	145582	154	22419.63
Soft Maple	97054	102	9899.51
Poplar	89498	98	8770.8
Beech	102771	64	6577.34
Misc. Oak	7658	197	1508.63
Misc.	28505	64	1824.32
White Pine	0	0	0
Hemlock	11340	71	805.14
Total			\$346390.15



		92/93	
SPECIES	Volume	\$/M	Value
Red Oak	183404	620	113090.48
Cherry	73451	1123	82485.47
Ash	120723	368	44426.06
Hard Maple	86842	282	24489.44
Soft Maple	57894	138	7989.37
Poplar	87045	142	12360.39
Beech	43807	103	4512.12
Misc. Oak	3944	324	1277.86
Misc.	50880	103	5240.64
White Pine	0	0	0
Hemlock	4739	71	336.47
Total			\$296208.28

		93/94	
SPECIES	Volume	\$/M	Value
Red Oak	395230	607	239904.61
Cherry	83564	1151	96182.16
Ash	73565	370	27219.05
Hard Maple	109676	308	33780.21
Soft Maple	73117	176	12868.59
Poplar	99020	124	12278.48
Beech	33225	91	3023.48
Misc. Oak	9302	286	2660.37
Misc.	29764	91	2708.52
White Pine	4863	70	340.41
Hemlock	3543	70	248.01
Total			\$431213.87

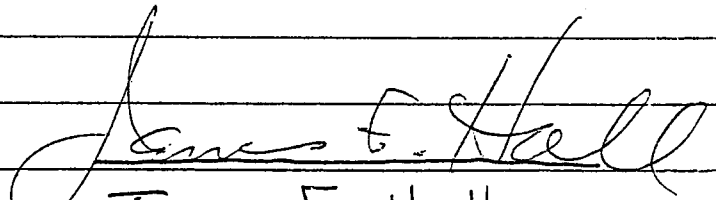
Year		Subtotal
88/89	\$	407,293.79
89/90	\$	161,742.74
90/91	\$	276,535.27
91/92	\$	346,390.15
92/92	\$	296,208.28
93/94	\$	431,213.87
Total	\$	1,919,384.10

TIMBER IN NO-CUT ZONE

Timber values based upon report of Mr. Kane, expert witness for Matson Lumber, and upon harvest volumes reported by Matson.

Width of No Cut ZoneDamages

25 feet	\$ 121,256
50 feet	\$ 242,112
100 feet	\$ 485,026

  
James F. Hall



A large, handwritten signature is written over a large circle. The number "72" is written inside the circle. The signature appears to be "Scott M. Hare".

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ALBERT T. CARLISLE, )  
 )  
Plaintiff, )  
 )  
v. ) No. 95-0376  
 )  
 ) Judge Lancaster  
MATSON LUMBER CO. and )  
MATSON HARDWOODS, INC., )  
 )  
Defendants. )

STIPULATION FOR DISMISSAL

NOW COME the undersigned, being all of the parties who have appeared in this action, by their counsel, and stipulate to the dismissal of Count V of Plaintiff's Complaint herein (Trespass) pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure.

Respectfully submitted,

A handwritten signature in black ink, which appears to read "Scott M. Hare".

Scott M. Hare  
Pa. I.D. No. 63818

Bartony Hare & Edson  
Law & Finance Building  
Suite 1801  
429 Fourth Avenue

Pittsburgh, PA 15219

Tel: (412) 338-8632

Fax: (412) 338-6611

Attorney for Plaintiff  
Albert T. Carlisle



C.S. Fossee

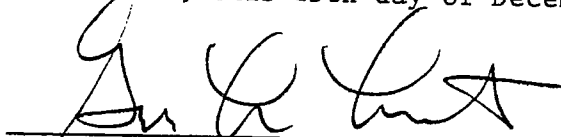
Pa. I.D. No. 11435

Reale & Fossee, P.C.  
22nd Floor, Lawyers Bldg.  
428 Forbes Avenue  
Pittsburgh, PA 15219

Attorneys for Defendants  
Matson Lumber Co. and  
Matson Hardwoods, Inc.

Date: December 15, 1997

SO ORDERED, this 15th day of December, 1997.



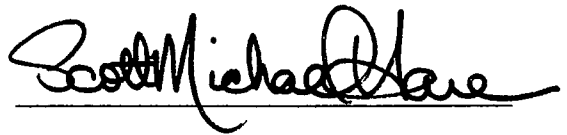
Gary L. Lancaster, U.S. District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **Stipulation for Dismissal** was served in this matter on this 15th day of December, 1997 by first class United States mail, postage prepaid, to the following:

Chester S. Fosse, Esquire  
Reale, Fosse, P.C.  
22nd Floor, Lawyers Building  
428 Forbes Avenue  
Pittsburgh, PA 15219

Counsel for Defendants  
Matson Lumber Company  
and Matson Hardwoods, Inc.

A handwritten signature in black ink, reading "Scott Michael Hare". The signature is written in a cursive style and is positioned above a horizontal line.



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ALBERT CARLISLE,  
Plaintiff

CA 95-376

vs.

MATSON LUMBER,  
Defendant

PROCEEDINGS

Transcript of TRIAL commencing on December 17, 1997,  
United States District Court, Pittsburgh, Pennsylvania, before  
Honorable Gary Lancaster, District Judge.

APPEARANCES:

For the Plaintiff: Scott Hare, Esq.  
For the Defendant: Chester Fossee, Esq.

Reported by:  
William E. Weber, RDR  
Official Court Reporter  
1027A, U.S. Courthouse  
Pittsburgh, Pa. 15219  
(412) 261-2446

Proceedings recorded by mechanical stenography. Transcript  
produced by computer-aided transcription.



1           You get to it, that is a decision you will make. I  
2 have taken longer than I intended, but I'm a lawyer and  
3 lawyers like to talk. I will leave you with this: We have  
4 spent a lot of time over the past two and a half years of our  
5 own and of yours because of this document. Any lawyer who  
6 drafts an agreement bears that in mind and like everybody else  
7 who does anything whether an engineer trying to build a  
8 building, you try to think of everything.

9           If you are a congressman trying to draft  
10 legislation, you try to think of everything. Unfortunately,  
11 what happens, every once in a while you really haven't thought  
12 of everything. That is why we are here. It would have been  
13 so much easier had John Kookogey thought of everything when he  
14 drafted this. We wouldn't have gone through this and neither  
15 would you. But I thank you. I think you have been a  
16 marvelous jury, I appreciate your attention to details and  
17 notes and everything else. I'm sure you will come to the  
18 correct decision. Thank you.

19           MR. HARE: Thank you, Your Honor. May it please the  
20 Court, Mr. Fossee. I want to start by thanking you for your  
21 patience over the last few days, in particular I appreciate  
22 your patience as we sat through a long elaborate talk about  
23 how badly the farm was damaged or not damaged, how badly the  
24 trees were marked up or not, how many times the stream was  
25 subjected to erosion or not. Those are clearly important

1 issues, they are important issues for another case, another  
2 day.

3 The issues for this jury in this Court are very  
4 straightforward. We have four of them. First is the 120 day  
5 notice. The second is the scope of the timber rights in  
6 1969. The third is the existence of what we called a  
7 convenient term, the no-cut zone. The fourth is whether  
8 Mr. Carlisle suffered any damages.

9 Like Mr. Fossee, I will begin with the 120 day  
10 notice. That really is the briefest issue. You will see that  
11 is in paragraph seven of the agreement of sale you will have  
12 with you. What does the language say? It says the seller is  
13 further granted upon 120 days' notice in writing to buyer the  
14 right to construct such roads as it deems reasonably necessary  
15 for its operations. It doesn't say each time, it doesn't say  
16 one time only. That is why we are asking you to decide the  
17 issue.

18 When you do that, remember the instructions His  
19 Honor has already given you, if you find language to be  
20 ambiguous, your instruction is to construe it strongly against  
21 the party that drafted it and in favor of the party who didn't  
22 draft it. In this case, any ambiguous language you have to  
23 construe against Matson and in favor of Mr. Carlisle as you  
24 try to resolve that ambiguity.

25 As you go about construing this language you have

1 MR. HARE: No, that was our only comment.

2 THE COURT: Mr. Fossee?

3 MR. FOSSEE: Your Honor, you are supposed to make  
4 some mistakes so we have something to object to. You didn't  
5 do that.

6 THE COURT: I think I may have. In the damages, I  
7 have these damages in here is straightforward contract claim.  
8 I'm reading the act here.

9 MR. HARE: The conversion statute?

10 THE COURT: Yes.

11 MR. HARE: We are prepared to withdraw that. I  
12 don't think there is credible evidence one way or the other as  
13 to when this cutting took place. The conversion statute  
14 provides two year statute of limitations. Frankly, it is too  
15 difficult a question to ask anyone to resolve how much if any  
16 of the cutting took place within the two year period.

17 THE COURT: Okay. All right.

18 MR. HARE: We are prepared to withdraw that and take  
19 contract damages.

20 THE COURT: Okay. I'm looking at this, the statute  
21 of limitations problem. All right.

22 MR. FOSSEE: There is a multitude of problems with  
23 it, saves a lot of time and effort.

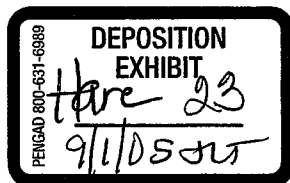
24 MR. HARE: We will take it out.

25 THE COURT: Okay. I think again what I'm going to

*Attorneys at Law*

Law & Finance Building  
Suite 1801  
429 Fourth Avenue  
Pittsburgh, Pa. 15219

Telephone 412/338-8632  
Facsimile 412/338-6611



March 23, 1998

Mr. Albert T. Carlisle  
1210 Oak Drive  
Ashtabula, OH 44004

Re: Carlisle v. Matson Lumber

Dear Bert:

I have enclosed a copy of my letter to Joseph Torregrossa, Esquire, the Director of the Third Circuit Mediation Program, together with a copy of our required Mediation Statement.

Please call so we can catch up with one another.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Scott'.

Scott Michael Hare

SMH:jc

Enclosures

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

ALBERT T. CARLISLE,	)	
	)	
Appellee,	)	
	)	
v.	)	Case No. 98-3035
	)	
MATSON LUMBER CO. and	)	
MATSON HARDWOODS, INC.,	)	
	)	
Appellants.	)	

**MEDIATION STATEMENT OF  
APPELLEE ALBERT T. CARLISLE**

**I. Factual Background**

Carlisle owns a parcel of land, measuring approximately 1239.6 acres, situated in Spring Creek Township, Warren County, Pennsylvania, known as the "Clough Farm." Carlisle purchased the Clough Farm from Fisher & Young, Inc., Matson's predecessor in interest, by a written Agreement of Sale signed under seal and dated May 28, 1969. Carlisle owns this property in fee simple, subject only to certain limited timber rights. The Clough Farm is enhanced by the presence of two blue-ribbon trout streams, Spring Creek and Broken Straw River.

The 1969 Agreement of Sale conveys to Carlisle all of the land and premises set forth therein, except that it reserves in Matson "all of the timber and trees, standing and fallen, situate on the premises above described," subject to certain additional limiting provisions. Further, Matson's timber rights are limited by "a map designating the forestry areas which shall be subject to cutting by [Matson] and also designating those areas belonging solely to [Carlisle], wherein [Matson] agrees that there will be no cutting."

After acquiring the timber rights on or about December 18, 1986, Matson began logging operations on the Clough Farm. None of Matson's predecessors had conducted any logging operations on the farm.

## II. Findings Below

At the conclusion of a three-day jury trial, Carlisle prevailed on the following issues:

1. The reservation of timber rights in the Agreement of Sale encompassed only trees existing at the time the agreement was executed, as Carlisle contended, and did not further extend to all trees that would ever grow on the property in perpetuity, as Matson contended.
2. The parties designated that there would be no cutting within 100 feet of all waterways on the property (the so-called "no-cut zone" contemplated by the map mentioned above).

3. Matson had, in fact, cut trees within the no-cut zone, causing Carlisle damages in the amount of \$110,000.
4. Matson is required to give 120 days notice to Carlisle each time it desires to build a road on the property.

### III. Positions on Appeal

Matson has appealed each of the four issues set forth above, and has identified eight issues to be raised on appeal. Carlisle's position with respect to all issues on appeal is that the verdict below was rendered by a jury based on the evidence presented during trial, and should not be disturbed.

In particular, regarding the scope of the timber rights, the Court below ruled that the agreement was ambiguous and therefore required resolution by a jury. After hearing all of the evidence, the jury ruled that the timber rights were limited and not perpetual. This finding accords with several cases that have examined the issue and held that a perpetual reservation of rights must be very clearly and unambiguously expressed, which did not happen here.

Regarding the no-cut zone, the Agreement of Sale required the timber company (Matson's predecessor) to

prepare and attach the exclusionary map. The timber company failed to do so, and as a result the parties do not possess any such map. This absence must be construed against Matson, not Carlisle. Further, having heard the evidence, the jury concluded that the parties did intend to create a buffer around the streams, and that the buffer was intended to be one hundred feet.

Regarding damages, the jury heard damages testimony from experts for both parties. Matson contends on appeal that Carlisle withdrew his claim for such damages. Carlisle never withdrew his claim for damages arising from timber harvesting in violation of the Agreement of Sale, and Matson is wholly mistaken in its contention.

Finally, the 120-day notice requirement under the agreement was also found by the Court to be ambiguous, and was therefore submitted to the jury for its resolution based on all the available evidence.

In short, the verdict below was based on findings of fact reached by the jury. Matson's appeal primarily challenges such findings of fact, rather than issues of law. Accordingly, its chances of obtaining a reversal are limited.



#### IV. Carlisle's Settlement Position

Carlisle has always been willing to settle this matter. Indeed, after the parties' cross motions for summary judgment were denied below, Carlisle filed a motion requesting the Court to refer the case to court-annexed mediation. The Court granted Carlisle's motion, and the parties attended a half-day mediation session. (Carlisle was accompanied by his expert witness and another witness in addition to counsel.) During the mediation, Carlisle made a two-part settlement demand, namely (i) that Matson immediately and permanently vacate the property and (ii) that Matson pay damages in the amount of \$5,000,000. Matson made no offer and, to this day, has not done so.

To settle this case now, Carlisle would require, at a minimum, that Matson fully comply with the verdict below, including by promptly paying the full measure of damages set by the jury. Carlisle is not prepared to compromise on the damage figure, because he has actually suffered greater damages than those submitted to and found by the jury.

Further, Carlisle assumes that Matson would expect a complete release of all claims as part of any settlement.

Before Carlisle would agree to release all claims, he would expect to be paid damages well in excess of the verdict below. Although Matson does not yet know this fact, Carlisle intends to file another lawsuit in state court to recover for the damages Matson has caused to the property by reason of its careless harvest practices. (For example, Matson has caused tons of topsoil to wash into Spring Creek, has placed skid trails in and through the Clough Farm streams, and has generally damaged the land and the health of the forest. As a result of its careless and reckless forestry practices, Matson has received at least one citation from a state agency.) These property damage claims were not part of the lawsuit below.

Assuming the parties wish to discuss a "global settlement" of all claims, including those that have yet to be filed, Carlisle would be willing to renew his prior settlement offer (that is, Matson's immediate and permanent withdrawal from the Clough Farm together with damages in the amount of \$5,000,000).

Carlisle's demand that Matson vacate the property is actually a modest demand, because there is relatively little remaining timber reserved by the Agreement of Sale, and such timber is mostly remote and therefore expensive to

harvest. Specifically, whereas the timber Matson has already removed was worth several million dollars, the remaining timber subject to the agreement is worth only approximately \$600,000. Given the harvest costs for such timber, moreover, much of it is not worth removing in any event.

We understand that Matson has approximately twenty million dollars in primary and excess CGL coverage. We are told that the carriers have denied liability to indemnify this claim. We do not know whether a declaratory judgment action has been commenced, or whether Matson's carriers have agreed to assume any liability herein.

Carlisle's objective in this case has always been primarily to protect and preserve the land and streams on the Clough Farm. He will not agree to any settlement that jeopardizes the land and streams.

Respectfully submitted,

  
Scott M. Hare, Esquire  
Pa. I.D. No. 63818

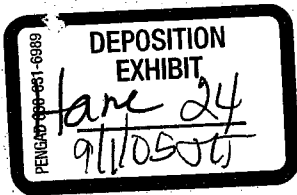
Bartony Hare & Edson  
Law & Finance Building  
Suite 1801  
429 Fourth Avenue  
Pittsburgh, PA 15219

*Bartony Hare & Edson*

*Attorneys at Law*

Law & Finance Building  
Suite 1801  
429 Fourth Avenue  
Pittsburgh, Pa. 15219

Telephone 412/338-8632  
Facsimile 412/338-6611



June 23, 1998

**VIA OVERNIGHT EXPRESS**

Mr. Lainard Bush  
Rd # 1 Box 9  
Spring Creek, PA 16436

Re: Additional Lawsuit against Matson

Dear Lainard:

I have prepared the enclosed Praeipce for Writ of Summons for filing with the Prothonotary's Office in the Court of Common Pleas of Warren County. The filing of this Praeipce will initiate a new lawsuit on Bert's behalf against Matson, and toll the running of any statute of limitations.

Please sign the Praeipce on Bert's behalf and take it to the court house for filing. The filing fee is \$60.50. You can tell the clerk that Bert will arrange for service at a later date, so there is no need for them to deliver the praecipce to the sheriff.

If you have any questions, please call.

Very truly yours,

A handwritten signature in cursive script that reads "Scott".

Scott Michael Hare

/SMH

Enclosures

IN THE COURT OF COMMON PLEAS OF WARREN COUNTY, PENNSYLVANIA

ALBERT T. CARLISLE,

Plaintiff,

v.

MATSON LUMBER CO. and  
MATSON HARDWOODS, INC.,

Defendants.

CIVIL DIVISION

NO. \_\_\_\_\_

CODE:

PRAECIPE FOR  
WRIT OF SUMMONS

Filed on behalf of  
Plaintiff

Albert T. Carlisle  
1210 Oak Drive  
Ashtabula, OH 44004

Tel: 440-964-2131

IN THE COURT OF COMMON PLEAS  
OF WARREN COUNTY, PENNSYLVANIA

ALBERT T. CARLISLE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MATSON LUMBER CO. and )  
 MATSON HARDWOODS, INC., )  
 )  
 Defendants. )

No. \_\_\_\_\_

PRAECIPE FOR WRIT OF SUMMONS IN CIVIL ACTION

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons in Civil Action  
against the within-named Defendants.

\_\_\_\_\_  
Albert T. Carlisle  
1210 Oak Drive  
Ashtabula, OH 44004

Tel: 440-964-2131

Date: June 23, 1998

IN THE COURT OF COMMON PLEAS OF WARREN COUNTY, PENNSYLVANIA

ALBERT T. CARLISLE,  
Plaintiff,

v.

MATSON LUMBER CO. and  
MATSON HARDWOODS, INC.,

Defendants.

CIVIL DIVISION

NO. 000353

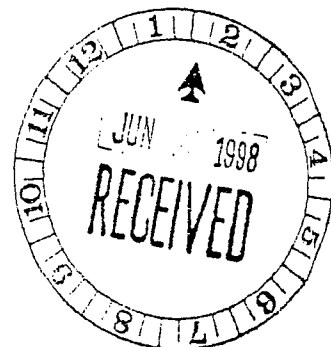
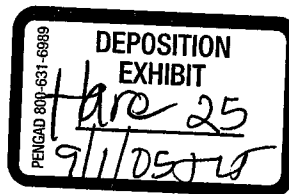
CODE:

PRAECIPE FOR  
WRIT OF SUMMONS

Filed on behalf of  
Plaintiff

Albert T. Carlisle  
1210 Oak Drive  
Ashtabula, OH 44004

Tel: 440-964-2131



Plaintiff's Appendix  
000696

IN THE COURT OF COMMON PLEAS  
OF WARREN COUNTY, PENNSYLVANIA

ALBERT T. CARLISLE, )  
)  
Plaintiff, )

v. )

No. 000353

MATSON LUMBER CO. and )  
MATSON HARDWOODS, INC., )  
)  
Defendants. )

PRAECIPE FOR WRIT OF SUMMONS IN CIVIL ACTION

TO THE PROTHONOTARY:

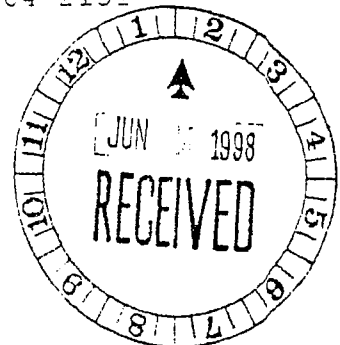
Kindly issue a Writ of Summons in Civil Action  
against the within-named Defendants.

*Albert T. Carlisle*

Albert T. Carlisle  
1210 Oak Drive  
Ashtabula, OH 44004

Tel: 440-364-2131

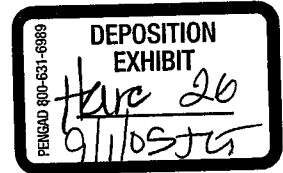
Date: June 23, 1998





Peter Krembs

42 PaCSA § 5535 (a)(1), (2)(ii)



(a)(1) civil action timely filed  
 if terminated, may commence a new  
 action upon same cause of action w/in 1 year  
 after termination

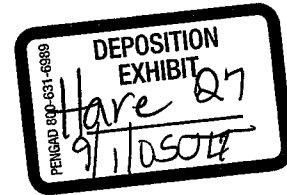
(a)(2)(ii) does not apply to action terminated  
 by

- voluntary nonsuit, (Rule 230)
- discontinuance, (Rule 229)
- dismissal for failure to prosecute, or
- final judgment on merits

Stinson, 972 F2d 59 (3d Cir. 1992)

⊙ In re PA Footwear, 199 BR 534 (BR ED Pa 1996)

Stinson at p.63 Savings statute "reflects a  
 legislative determination of the Commonwealth's  
 policy regarding limitations when a suit is  
 dismissed. It provides that in most instances  
 where the dismissal is for a reason unrelated to  
 the merits, limitations will not bar a new suit



Pa Footwear

p. 546 - cites language from Stinson

Pa savings statute is patterned on NY statute, which is broadly construed.

- deals w/ counterclaim

Communication Workers of Am. v. AT&T,  
No 89-8150, 1991 US Dist LEXIS 12240 (E.D. Pa. Aug 30, 1991)  
stipulation for dismissal of 1 count, rather than entire action, treated as Rule 15 amendment of complaint

cf PIRGES v. Waddell, 51 F3d 1179 (3d Cir. 1995)

X Berk v. Caterpillar, 50 F3d 405 (7th Cir. 1995)

distinguish b/c federal SOL applies  
(ct. refuses to borrow state savings statute)